



The Comptroller General
of the United States

Washington, D.C. 20548

Cunningham

Decision

Matter of: Memorex Corporation--Reconsideration
File: B-223951.2
Date: November 26, 1986

DIGEST

Prior decision is affirmed where request for reconsideration fails to show legal error or information not previously considered.

DECISION

Memorex Corporation (Memorex) has requested that we reverse our decision in Memorex Corp., B-223951, Oct. 20, 1986, 86-2 C.P.D. ¶ ___, in which we dismissed the company's protest against the decision of the National Institutes of Health (NIH) to reject the company's response to a published synopsis for an NIH requirement for computer tape cartridges. After concluding that the responses submitted, including one by Memorex, were unacceptable, NIH placed an order for the cartridges against a "non-mandatory" General Services Administration Supply Schedule contract with Wabash DataTech Inc.

We affirm our prior decision.

We dismissed the protest because we concluded that Memorex could have filed its specific basis of protest with our Office more than 1 month earlier than it did and that Memorex's failure to have filed earlier rendered its protest untimely. See 4 C.F.R. § 21.2(a)(2) (1986).

In its reconsideration request, Memorex notes that it filed its initial protest with our Office on August 8 and contends that the August 8 protest was timely notwithstanding the very specific grounds of protest which Memorex did not file with our Office until September 26, 1986. Our decision noted that Memorex's August 8 protest was general--to the effect that Memorex's cartridge should have been found to be acceptable by NIH--compared with the specific grounds of protest first

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filed on September 26. Specifically, the August 8 protest to our Office made no mention of the two NIH technical objections to Memorex's product, the "tape thickness" and "file-protect selector" characteristics. However, in Memorex's September 26 letter, Memorex discussed the "tape thickness" and "file-protect selector" characteristics. We further noted that NIH had informed Memorex of NIH's perceived deficiencies in these two areas by its letter of August 5, 1986, received by Memorex before it filed its August 8 protest. NIH's letter should have enabled Memorex to have filed a specific, instead of a generally-worded, protest on August 8 with our Office. Therefore, we concluded that Memorex's specific protest grounds first filed with our Office on September 26, 1986, were new grounds of protest instead of comments on NIH's September 16, 1986, protest report to our Office.

In its reconsideration request, Memorex attempts to characterize its real protest as the August 8 generally-worded one, and refers to its statements that, "Memorex is supplying the same cartridge under the same specifications to other . . . agencies. Memorex exceeds all published specifications for this product." In contrast to this general statement, in its September 26 letter, Memorex revealed for the first time that it had specific objections to NIH's technical determination. Memorex argued that the tape thickness specification was defective and that its file protect selector was evaluated improperly. It is clear that these specifics were the actual substance of its protest, and that the September 26 protest is, in fact, its only real protest. Consequently, as stated in our previous decision, the initial general protest is not sufficient for the purpose of filing a timely protest when the protester is on notice of the specific bases of protest, but elects not to raise them until after the time for timely filing with our Office. See Synercom Technology, Inc., B-224477, Oct. 1, 1986, 86-2 C.P.D. ¶ ____.

In any event, we do not independently investigate the merits of a claim that a company exceeds the specifications for a required product or that it is supplying the same product under the same specifications to other agencies. However, the original protest did raise a claim of an unexplained rejection of a technical proposal which we developed based on the limited facts known to us at that time.

Memorex also cites Fort Wainwright Developers; Fairbanks Associates, B-221374.4 et al., June 20, 1986, 86-1 C.P.D. ¶ 573, for the proposition that a protest, which is specific enough to inform a contracting agency of the basis of protest, will not be dismissed. As distinct from the facts in that case, however, Memorex's August 8 protest was not

specific enough to inform NIH of Memorex's actual basis (the specifics contained in the September 26 filing) of protest thereby depriving NIH of the opportunity to respond to the later raised bases of protest. Although Memorex argues that NIH's September 16 report did contain a "full statement of NIH's position," this simply is not the case as NIH's protest report contains no reply at all to several of Memorex's September 26 objections. For example, Memorex's September 26, 1986, letter alleged that as to the file-protector selector characteristic, NIH had not done specialized testing allegedly required to determine the adequacy of Memorex's file protect assembly. Moreover, we were not aware at the time the protest was initially filed that Memorex could have filed a more specific protest; nevertheless, this does not prevent us from dismissing Memorex's protest when the facts become known.

A request for reconsideration must contain a detailed statement of the factual and legal grounds upon which reversal or modification is warranted and specify errors of law made or information not considered previously. See 4 C.F.R. § 21.12(a) (1986). Memorex has failed to demonstrate legal error or information not considered previously and, thus, our original decision is affirmed.

for Seymour Efron
Harry R. Van Cleve
General Counsel